MEMPHIS APPEAL

—BY—

GALLAWAY & KEATING.

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MEMPHIS APPEAL

TUESDAY MORNING, FEB. 6, 1877.

THE TEN PER CENT. INTEREST LAW.

A correspondent at Knoxville writes us, inclosing a communication signed "Englishman," which appeared recently in the *Tribune*, and which treats of the proposed repeal of the ten per cent. law. He asks that we publish it with such comment as it may provoke. We comply with his request, and make room for the communication, as follows:

Ten Per Cent. Interest Law.

To the Editors of the Tribune:

I have noticed communications by "Borrower" and "Lender" in the *Tribune*, on the law now before the legislature to make it usury to charge more than six per cent. interest. As a naturalized citizen, Englishman born, I have an idea which I wish to advance, and which I consider much more important than the views advanced by those correspondents. The proposed law interferes with the liberty of the citizen. The present law is bad enough; the proposed law is intolerable. There can be but one true rule as to the rates at which money shall be hired among a people sufficiently intelligent to be capable of doing business without the intervention of a guardian. That rule is for the hirer of it to get it on the best terms he can, as he would have to do if he were to hire a horse, or mule or anything else. The most striking difference between the English and the Americans, to a candid Englishman, is that the average American is more intelligent than the average Englishman. You have no such man as Gladstone, but when it comes to a comparison of the masses, the American is certainly more intelligent than the Englishman. In England for over a quarter of a century the law has been, and now is, that he who has money to hire out may make the best bargain he can with the person who wishes to hire it of him. The law has worked admirably, and interest is now decidedly lower than when that law of freedom and liberty was passed. No member of parliament would now dare to propose a repeal. Each average Englishman would, as a general thing, feel indignant at the idea that he was again to be put in leading-strings and be put back in the state of tutelage the English people were formerly kept in by the English law-making power. In comparing Tennessee and England above, I should perhaps have said East Tennessee, because I am too ignorant of the people of Middle and West Tennessee to speak positively of them. But I am positive that the people of East Tennessee are quite intelligent enough to take care of themselves, without any guardianship being exercised over them by the law-making powers. No doubt if the Tennesseans were allowed their freedom it would sometimes happen, as it sometimes happens in England, that an improvident man would injure himself by agreeing to pay too large a price for the money he borrows. But I have known a man to injure himself by eating too much roast beef and plum-pudding, and when it would have been a good thing for him if a policeman had superintended the matter, and made him stop when he had eaten enough. But I would much prefer that such hard-eater should, together with many other hard-eaters, eat themselves to death, rather than such policemen should interfere with my liberty and dictate to me when I had eaten enough. East Tennessee has a delightful climate, and its sources of wealth go even beyond what is claimed. A large amount of English capital, much needed because of the impoverishment effected by your late civil war, has been lately brought into it. Now, if the Tennesseans over twenty-one are, as I think, able to attend to their own business without any guardianship to restrain their liberty, it is bad policy, if it be considered advantageous that other Englishmen with means should come in, to shock English love of liberty by establishing a guardianship over any class of contracts. I feel quite sure that many of them will, if such stringent guardianship be established, go, as many have heretofore done, to some one of the eight or nine States where the guardianship does not exist.

ENGLISHMAN.

"Englishman" is sensible and right. The true policy of Tennessee is to repeal the usury laws altogether, and make money a free commodity. All such laws, as we have time and again held, defeat the end at which they aim. The only condition on which borrowers can obtain money at the lowest possible rate of interest is by allowing absolutely unrestricted competition between lenders, which can never exist so long as the law prescribes what they shall or shall not do. Massachusetts, from an extreme usury law, has passed to the most liberal legislation on this subject of any State in the Union, and there is no locality within the national limits where it is so easy to borrow at so low a rate. In New York, as the *Journal of Commerce*—a safe and reliable guide—asserts, as a matter of fact, nine-tenths of all money borrowed at a high rate in times of financial pressure, in defiance of the usury law, renders a more real service to the community than the entire volume of loans made during the same period within the legal limit. If the usury law was wholly repealed, the average rate of interest in this State (as it is in London) would be far below seven per cent., and the market would seldom go above it. The fact that very needy borrowers or persons in moderate credit could always obtain a loan at some rate, without serious risk to the lender, would give employment to a larger volume of capital, and attract it here from all parts of the world. And such freedom would stimulate warrantable business adventures. There are many commercial enterprises which, if successful, could well afford to pay a bonus for the use of capital borrowed for the purpose, and the money could be oftener had, to the great satisfaction of both parties, if such a contract could be legally maintained. One of them just now coming into prominence is the oil interests of Overton county. Were money free and untrammeled there can be no doubt that prospecting for wells would be brisk and the State would shortly have the advantage of a new industry, and one that in Pennsylvania has reached proportions that place it among the most remunerative of that much-favored State. The house should weigh all these considerations before putting itself on record as responsible for legislation that inflicts a blow at the welfare of the State.

THE dog law, after the tax and the bond question, threatens the legislature with a sort of *rabies*, such as its proposed repeal has inflicted upon sheep farmers. We think an easy solution of the matter might be found in those opposed to the dog following the advice of the New York *Herald* in the case of the Spitz dog. This venomous little link in the chain of evolution has recently made many victims to hydrophobia in the great commercial capital, the latest case involving the lives of a whole family, therefore the *Herald* suggests that the sly, spiteful, treacherous little Spitz should have a rope collar with a stone attached, and a bath in the river wherever he may be found. "He is not wanted among us," it says, "any more than the tarantula, the scorpion or the rattlesnake. If people found one of these latter in the streets they would dispose of it on short notice, regardless of whose pet it might be. They should in like manner welcome the wandering little Spitz demon wherever he may be found, with ready hands, to the first available hospitable grave. If people love such pets, let them keep them in their own arms. Then, if the darlings bite anybody, we shall only have fewer simpletons in the world. The popular cry should be, War to the knife on the snapping Spitz, and on all useless curs." They should be put out of the way speedily, especially where they endanger life or threaten so remunerative an industry as wool-raising. As between the useful sheep and the useless dog, no man should hesitate for a moment. Down with the curs.

THE MANNING MURDER.

As Told by Calvin Perkins, an Old Friend of the Murdering and Murdered Sheriff—"A Tale of Blood."

Material for a Hundred Dime Novels—Politics and Politicians—Love and Lovers—Romance and Reality.

Maskers Not Mummers—Regulators in Regulation Costume—Money and Influence Checkmated by the Handy Revolver.

From the Austin (Miss.) *Cotton Plant*, of the first instant, we copy the following communication, reciting the history of the Manning murder and the crimes collateral to it:

A HISTORY.

AUSTIN, MISS., January 27.—The undersigned, being desirous of doing a simple act of justice to two citizens of your town—John S. Fretwell and William Fretwell—ask leave to make a statement of what he supposes to be the cause of the death of M. J. Manning. The writer was for years the intimate friend of Manning, and continued so until circumstances conclusively proved that Manning was not worthy of his friendship. If it be charged that what I am about to say reflects upon the character of a dead man, who is not here to refute what may be brought against him, my answer is, that justice to the living, who were wronged by the dead, and who lost their liberty, and their character by the dead man's acts, demands it. It is hoped that the object to be accomplished will be a sufficient apology for the unusual length of this communication. The fall of the year 1875 found

M. J. MANNING THE SHERIFF OF TUNICA COUNTY,

for which office he was then a candidate for re-election for the third time. C. W. Dunaway, a step-son of Manning's wife, was clerk of the circuit and chancery courts, and was a candidate for re-election, and William Fretwell, a young merchant, was a candidate for county treasurer on Dunaway's ticket. Manning for two successive elections had not only been able to secure his own election, but had controlled every other office in the county, so that not a member of the board of county supervisors, not a justice of the peace, nor a constable or other peace officer in the county, dared do anything except with Manning's approbation. In a former election Manning had had Dunaway elected to the office which he held, although he always professed to have a contempt for Dunaway, and would frequently curse and abuse him to his face, and on one occasion, at least, was known to have given him a severe beating. In the election which was now pending (1875) Manning had thrown Dunaway overboard and taken up a rival candidate, and Dunaway was heading the opposition to Manning, putting in the field a candidate for each office sought by Manning and his friends. About this time

JOHN FRETWELL

came from Virginia to make Austin his home. On the night of October 27, 1875, the entire business portion of the town of Austin was destroyed by fire. The fire originated in the store of Dunaway, on which there was no insurance, and all the circumstances plainly indicated that it was the work of an incendiary. No clue could be found to the perpetrator of the deed, nor did suspicion rest upon any one save that Dunaway whispered it to a few that Manning had it done in order to ruin him. At the election which followed Manning's entire ticket was elected. In connection with the strife and feud engendered between Dunaway and Manning in their wrangle for public office, there were matters of family history between the two, well known to all the citizens of Tunica county, but of such a nature as to forbid their mention here. In December or January following the election Mr. W. V. Sullivan, a young attorney, located at Austin for the purpose of practicing his profession. Sullivan seeing the power and influence of Manning, and that he was disposed to make any use of it in order to accomplish his objects, determined to combat it, and on several occasions, in defending parties whom Manning was prosecuting, warned the jury not to let

MANNING'S POWER

control their verdict. From this, and other circumstances, the Fretwell brothers took a liking to Sullivan, and would frequently visit him at his office. A short time after the first of March following, Manning preferred charges against John Fretwell for illegal voting, and arrested him about one o'clock at night, and put him in jail without giving him the opportunity to give bond. After Fretwell had remained in jail a few days, he was carried before a magistrate and, with Manning's consent, released on his own recognizance, conditioned for his appearance at a certain day, to which his case was continued, in order that witnesses might be obtained. On the day set for this trial, about the twelfth or thirteenth of March, John Fretwell was absent, having gone to Helena, Arkansas. On the morning of the fourteenth of March, Manning and Sullivan had

A SHOOTING AFFRAY,

in which Sullivan was severely wounded. Within a few minutes after shooting Sullivan, Manning went to William Fretwell, cursed and abused him, and offered to fight him. On the same morning, after the shooting, Dunaway left town very hurriedly, and also went to Helena. On the next night Manning had some parties to go to William Fretwell and tell him confidentially that he had better leave, or some great harm would be done him; so William Fretwell left, and went to Helena. On an investigation of Manning's case before a magistrate, completely under his control, Manning proved by John Regan (one of the parties engaged in the Harvey affair) and by Robert Green, a very disreputable negro, that he was justifiable in shooting Sullivan. At this trial the State was not represented. I, in connection with some other attorneys, represented the defense, and while the evidence justified Manning, I did not feel that it would stand a rigid examination. A part of Manning's defense was to prove that Dunaway and the Fretwells had formed a conspiracy to take his life, and that they were trying to accomplish their object by

USING SULLIVAN,

without his (Sullivan's) knowledge, by carrying tales to Sullivan. Mr. Sullivan, who is a gentleman, always insisted that he did not make the first attack, and that as he came out of the postoffice that morning, while looking intently at a postal-card, he was fired into by Manning. On the night of the eighteenth of March the town was aroused, about twelve or one o'clock, with the report that two men in masks had entered Manning's bedroom for the purpose of assassinating him, and that Mrs. Manning only being present the maskers went from Manning's house to the hotel in search of him. On the morning after the masking very little with regard to it could be heard on the streets of Austin, showing that the people did not believe it, but that they were afraid to say it was not so. Manning, on the night of the masking, spread the report that Dunaway and the Fretwells were the

GUILTY PARTIES.

From my knowledge of Manning, I immediately concluded that it was Manning's *friends*, and not his enemies, who had entered his chamber, and from some slight evidences, which I got by close observation, I concluded that the maskers were Chapman and Regan. Manning employed me to prosecute the Fretwells and Dunnaway, and seeing that I was doubtful about their guilt, labored very hard to convince me. He spent months in getting up testimony, going to Memphis and Helena, and weaving every fact that he possibly could into the evidence against them. As Manning's counsel, all the evidence which he obtained was laid before me, and from a number of circumstances too numerous to mention, I became more and more convinced that the Fretwells and Dunnaway were innocent of the crimes with which they were charged; indeed, I had such evidences before me that no sane man could have doubted that Manning was attempting, by perjured testimony, to convict

INNOCENT PARTIES.

My friendship for Manning, and that alone, raised doubts in my mind; I could not believe it possible that he, my friend, would be guilty of such an atrocious crime. In the meantime the Fretwells had been arrested and were committed to jail on two indictments, one for burglariously entering Manning's house, and the other entering the hotel in masks. About three weeks before September term, 1876, of the circuit court, Manning informed me that the Fretwells were ready to confess, and told me that he wanted me to take their statements in writing. The statements were taken, and from the manner in which they were made I was satisfied that the parties making them were telling something they knew nothing about, and that they had been posted to say what they did, but the tale was such a long one that it failed to coincide with the evidence against them in some very important particulars.

THE FRETWELLS

were told that if they would plead guilty to the lesser indictment of the two against them that Manning's influence would be used to have a *nol. pros.* entered against them on the other, and to have the lightest penalty possible under the law inflicted as to the indictment they should plead guilty to. They were told, further, that as low a penalty as a fine might be imposed under the first indictment; this, however, was my mistake, honestly made, as it was found afterward that one year in the penitentiary was the least, so at the September term, 1876, of the circuit court, the Fretwells went into court and plead guilty to entering the hotel in masks, and they were sentenced to one year's confinement in the penitentiary. I felt very badly about the matter, and if I had had the moral courage, would have come out at the time and denounced it, but not having this, my mind caught at every argument in favor of their guilt, as I wanted to believe that they were in fact guilty, rather than that my friend should be guilty of

SO BLACK A CRIME.

Such being the condition of my mind, I nursed every evidence favoring that idea, until I almost persuaded myself that they were guilty. Thus things remained until the night of the eighth of November, 1876. On that night Manning told me that when the Cheek came down he was going to kill a man. Having often heard him threaten to kill men, I thought very little of it, supposing that he was intoxicated. On the next morning Harvey was found dead at the landing. As soon as I heard that there was a dead man on the river bank, it flashed over me that Manning and his confederates, Regan, Chapman and Christensen, were the guilty parties, and my own mind was then satisfied, beyond a doubt, that the man who could lay behind a log and assassinate another in the night, could also have hatched up just such a plot as I feared had been worked up against the Fretwells. I accordingly told the whole matter to my friends and to a number of others, and told them to tell Manning what I was saying, hoping by that means to run him out of the country, as I well knew that he had

TOO MUCH MONEY AND INFLUENCE

ever to be convicted, no matter what he might do. The arrest of Manning, and his release by a magistrate on bail, when he admitted to having committed a most atrocious murder, is well known to every one. In the meantime I had been using every effort to get the Fretwells pardoned, but without success. Manning, after he was released on bail, permitted the Fretwells to have a good many liberties, such as going around town, and gave them to understand that he would consent to their being pardoned, and would try to get them pardoned, provided it were done so with the understanding that he had used no wrongful means to obtain their conviction. In this way matters remained until a short time ago, when Manning publicly said that the Fretwells had not been pardoned, and he would be d——d if they ever should. As soon as John Fretwell heard this he made

THE ATTACK UPON MANNING

in the hotel. From gentlemen who were eye-witnesses, I have gathered the following facts with regard to the killing of Manning: On the evening of the twenty-third instant, Manning and several other parties were seated in Dr. Phillips's drug store, near the stove, when Mr. Gibson came in and said: "Captain Manning, you have been accusing me of being implicated in Fretwell's attempt to kill you, which is a d—d lie." Before Gibson had well finished his sentence, Manning, who had a shotgun lying across his lap, and a needle-gun on the counter by him, grasped the shotgun, and the muzzle of the gun being from Gibson, he commenced to raise it up and turn it toward Gibson. Gibson then quickly drew his pistol and fired. Manning then ran to the back room of the store, and halting at the door, snapped both barrels of his gun at Gibson, Gibson also snapping his pistol at Manning. Manning then ran out the back door, and immediately

SIX OR SEVEN SHOTS WERE HEARD

in rapid succession. Manning then called for help, and Gibson was the first one to go to his assistance. The others then came out, but no one was to be seen save Manning and Gibson. Manning then told Gibson that he (Gibson) did not kill him, but that Fretwell did it. It has been reported that when John Fretwell made his attack upon Manning in the hotel, that Manning was unarmed; but such is not the case. Any one who knew Manning would know better; and, besides, his pistols were seen on him at the time. Fretwell attacked him in front, and he had every opportunity to defend himself, but he preferred running. It may be a matter of surprise to some why the Fretwells should plead guilty when they were innocent, but this is very easily explained. There were indictments against them under which they might have been imprisoned as long as twenty years. They had no money, no influential friends; in fact you may say no friends at all. People were afraid to befriend them on account of Manning. Manning was the sheriff and jailer, and had access to them at all times, so that he might work on their fears. He could prove anything he wanted to prove, and, last of all,

HE HAD THE SELECTION OF THE JURIES.

The next question is, why should Dunaway, who had money with which to employ able counsel, care if the charges which Manning brought against him were false? The answer to this is that while these charges were false, other charges could have been brought against him which were not false. Some time about the year '66 or '67 Dunaway was indicted for murder, and the indictment mysteriously disappeared, and the only witness on whose testimony it was found disappeared at the same time. It was always supposed that Manning had control of that witness and of that indictment. It is supposed by many that Manning had run Dunaway off to some little out-of-the-way town, and had him murdered, and that Harvey, being a detective, had traced up the killing of Dunaway, and was blackmailing Manning, and that, accordingly, Manning killed him. Long as this narrative is, many important facts have been left out which, if put in, would strengthen very much those which have been related.

CALVIN PERKINS.

Mrs. Dunaway-Manning.

The Evansville (Ind.) *Courier* furnishes the following material for a first-class domestic drama: "It's rather an old story that we have to tell, and rather late in the day to tell it. But to arrive at its true inwardness, and to get at the bottom of facts, has caused several weeks of diligent inquiry and considerable correspondence. What we have to say is in relation to the Harvey murder, which occurred in Mississippi some weeks ago, and which was merely the sequel to a family romance that had its origin here in Evansville. Out in Louisville, some ten years ago, there dwelt a young girl, pretty, but poor, who had a sweetheart named James Harvey, who, too, was pretty and poor, and who won the girl's heart. Her hand he could not obtain, for the reason that the girl was ambitious, and had visions and dreams of an old man who would become infatuated with her, and, bringing the requisite amount of this world's goods, would throw himself at her feet and offer his hand and heart. Her dreams were realized. The old man came in the person of a gentleman named Dunaway, a retired merchant, fifty years of age, who had lost his wife several years previous. The young girl of eighteen and the merchant of fifty were married, and came to Evansville, where they resided some years. The old man's health failing, he removed to a plantation he owned near Austin, Mississippi. He lived but a short while afterward, and a year or so later the young girl returned to this city wearing widow's weeds. In 1869 the friends of Mrs. Dunaway received neat cards of invitation to attend her marriage to Captain M. J. Manning, announced to occur at the church of the Assumption in this city. The marriage was celebrated in grand style, and was followed by an elegant reception at the residence of the bride. A bridal tour followed, and after "doing" the eastern cities the "newly wedded" repaired to the home of Captain Manning in Mississippi. Here we will leave them while we go back a little and introduce to the reader other characters in this domestic drama. After the death of her first husband, while Mrs. Dunaway was living in this city, she renewed her acquaintance with a Mrs. Reagan, her sister, and on one of her trips to Mississippi was accompanied by her sister's daughter, whom she introduced to her friends and chaperoned through one winter's festivities at Austin. The young lady afterward married a Dr. Chapman, who is also implicated with the husband Manning in the murder of Harvey. If we are to judge from the accounts in the Memphis papers, the poor lover Harvey was not forgotten in all these years. Mrs. Manning seems to have taken a loving interest in his welfare, and corresponded with him in all his wanderings. There is nothing that goes to show that the two met previous to a few months ago, when in the wicked city of Chicago they chanced to be thrown together—he on his way east, she on her return home from the Centennial. On that same trip he accompanied her as far as Memphis, the two stopping here for a few days, and then passed on down the river and to death."

IMPORTANT DECISION.

Opinion of Judge C. W. Heiskell, of the Circuit Court, in the Liquor Dealers' Case—The Privilege Tax.

The City Charter and the Ad Valorem Tax—Saloon Keepers Exempt from the Twenty-five Dollar Municipal Tax.

Yesterday Judge C. W. Heiskell, of the circuit court, delivered a lengthy and comprehensive opinion in the test tax cases of the city of Memphis *vs.* the liquor dealers. As will be seen from the opinion, the questions involved are of no little importance, and will be especially interesting to all saloon keepers. Without discussing any of the questions ruled upon, we present the opinion in full.

THE OPINION.

As I understand the agreed state of facts in this case, the opinion of the court is asked as to the validity of a claim by the city of Memphis to twenty-five dollars per annum from every saloon keeper in the city, in addition to one hundred dollars privilege tax, which they have paid. As I understand, the city claims this twenty-five dollars under sections 211 and 215 charter, and ordinances 1875, pages 95, 97.

Under these sections "all merchants and other dealers are to pay an *ad valorem* tax upon the capital invested in their business," and the word "merchants" is defined to include all persons trading in any kind of goods, wares, and merchandise.

Upon applying for a license each merchant is to pay the city tax-collector twenty-five dollars. Provision is also made for the time and manner of determining the "capital invested."

And then follows this section: "In all cases of privilege taxes, where the taxes for any corporate year on the capital invested as assessed, exceeds the amount of the privilege tax already paid for that year, the tax-collector shall credit the amount of taxes due on the *ad valorem* assessment, with the amount paid as a privilege tax for said business; and in all cases where the taxes due on the *ad valorem* assessment on capital invested for any year, shall be less than the amount paid for the privilege tax for the same year, the *ad valorem* tax on the assessment shall be abated and no collection made thereon."

Let it be observed that by sub-section 14 of section 226, page 102, charter and ordinances of 1875, liquor dealers are required to pay a privilege tax of one hundred dollars per annum; provided that, in addition to said privilege tax, every person or firm selling liquors in the city of Memphis, in quantities less than a quart, or in larger quantities to be drunk at the place of sale, shall pay the same tax on their capital invested in business as other merchants are required to pay at the time of levying said merchants' tax, and they shall have the same privileges and be subject to the same restrictions as other merchants are or may be.

It seems evident that the former sections above referred to tax merchants generally. The section above quoted applies specifically to retail liquor dealers. I am of opinion that it was not the intention of the law-making power to tax liquor dealers under both provisions.

To hold that it was would override one of the canons of common sense, if not of construction. When a class is legislated about, and in the same law, particular persons of the class are specially legislated about; the general legislation is not to be applied to the latter. The special legislation controls all their rights and liabilities.

Certainly it would seem that no court would hold the general and special legislation, both applied to the particular class, unless it was made applicable by apt words, especially would no court feel called upon by construction to doubly tax the special class, or impose the general as well as the special tax, in a case where the special tax was much larger than the general.

Here the liquor dealers pay their one hundred dollars as required by sub-section 14-226. If it was the intention of the city legislation that they should pay twenty-five dollars under section 211-15 why not have said so? and why not at once in sub-section 14 have placed their privilege tax at one hundred and twenty-five dollars?

To hold that this is what in effect they did do would be to establish a judicial circumlocution office, and for the purpose of imposing grievous burdens on the citizen, whereas in doubtless cases it would seem a safe rule to give him the benefit of the doubt.

Besides, in order to tax liquor dealers in section 211, 215, you would tax them as merchants, and as under sub-section 14, p. 226, you tax them as liquor dealers, if the construction contended for prevails, you would tax the same class of citizens, for the same thing, twice. It might as well be claimed that you could tax a blacksmith, as such, one hundred dollars for the privilege of exercising his calling, in one part of an act, and then in another part of it, call the same man a merchant and tax him as a merchant, though he only sell wagons and horse shoes. Without doubt, if the same person exercises the two callings of liquor dealer and merchant, he must pay a tax both as liquor dealer and merchant. But it can never be permitted to tax him in both capacities, or impose the tax of both capacities upon him when he exercises only one of the callings.

Besides all this, it is quite clear to see that the tax of one hundred dollars exhausts the taxing power of the city.

By section 691-c, of the code, the State privilege on liquor dealers, in cities of five thousand inhabitants, is fixed at one hundred dollars per annum, and by section 691 g. counties and incorporated towns are inhibited from imposing a higher additional tax than the State.

This is a general law, and I cannot see why it should not apply to Memphis as well as all other towns of the State. I cannot concur with counsel for the city that, by the charter of 1875, these sections were repealed so far as this city is concerned.

Nor do I understand that the act of 1871 repeals these sections. I think it a sufficient comment, if not an answer to the argument, that the latter does not say so; that the practical construction of that act has been against such repeal, if it applies to this subject at all, which I doubt. I say the practical construction has so done, because no city or county in the State has ever under it attempted to impose a higher privilege tax than the State.

But it is said that under the new charter (1875) the enumerated privileges may be taxed in "the discretion of the city government."

Is this to be understood as taking it from under the general restrictions of the act of 1869 (Code, sec. 691, g), or is it to be read subject to these restrictions?

While it is true that all charters are special laws, and many confer powers and privileges not enjoyed or conferred upon other citizens of this State, yet these special powers must be made to appear by a clear legislative intent.

The State does not part with any part of its sovereignty, unless by plain and unambiguous language. And if the power conferred can be construed so as to accomplish the object intended, and, at the same time, as not in conflict with general laws, I understand it to be the duty of courts so to construe it.

Now, in this case, so far as I can see, no beneficial object will be conserved by the construction contended for. On the contrary, the exercise of the power that should be conferred by such construction might be dangerous.

To give cities of over thirty thousand inhabitants an unlimited discretion to tax privileges, would, to say the least, give them extraordinary powers; and, if the legislature intended that this discretion was not to be limited by the general law, it would seem that they could and would explicitly have so stated, and not left it to implication or construction; especially would this be so under our constitution of 1870, article 2, section 17, and that canon of construction which allows repeals by construction or implication only where there is an irreconcilable conflict between two acts. Or, if the position is that it is not a repeal, but that the charter is uncontrolled by the act of 1869, the rule will still apply. Charter privileges, in order that they rise superior to the general law, must be shown to be so by clear and unambiguous language. Or if they can be subordinated to the general law, and yet their purposes be beneficially executed, the courts will so hold.

Now, applying these principles here, it seems to me that no beneficial purpose would be carried out by conferring upon this city an unlimited taxation of privileges. On the contrary, if experience teaches anything, it is that the construction that limits this taxing power should prevail.

The acts are not in conflict. They are in *pari materia*. The one confers a discretionary power; the other limits that power here, as well as elsewhere in the State.

I hold, therefore, first, that the city by its ordinances never intended to exact the twenty-five dollars from the saloon keepers; and, second, if it did so intend it is beyond its power to do so.

[*Note.*—In speaking of the want of power on the part of the city to demand a privilege tax greater than that exacted by the State, the judge refers only to the privilege of liquor dealing or saloon keeping, as that is the only question before the court. Nor does he intend to touch upon the power of the city to collect a capital tax from saloon keepers in proper cases.]

THE RAILROAD WAR.

The Supreme Court of the State Decides the New System of Assessment Unconstitutional.

Under the Constitution the Legislature Cannot Tax the Property of Railroad Companies.

List of Railroads that have Paid, together with the Sums they have Paid—By a Special Act they can get their Money back.

The case of Thomas S. Ellis, revenue collector for Sumner county, *vs.* the Louisville and Nashville railroad company, was decided yesterday by the supreme court. The opinion sets out with reciting the substance of the different sections of the act of the legislature passed March 20, 1875, and entitled "an act, declaring the mode and manner of valuing the property of a railroad company for taxation," and quotes section 11, which is as follows: "That any railroad company which will accept as a special amendment to its charter for a period of ten years, from the first of January, 1875, and that will pay annually to the treasurer of the State 1½ per cent. on the gross receipts from all sources of such company, shall be exempt from the foregoing provisions of this act, and the payment of 1½ per cent. upon all gross earnings shall be in full of all taxation." Judge Deaderick, in delivering the opinion of the court, said:

"But it is insisted that the eleventh section of the act proposes, upon certain conditions, a different rule of taxation than that provided for in the first ten sections of the act. These first ten sections prescribe a mode of ascertaining the value of the property of railroad companies, that it may be taxed equally and according to its value, as other property in the State, by the State, counties and incorporated towns—while the eleventh section provides a different rule of taxation for the benefit of the State alone; all the taxes paid under this section are to be paid into the treasury of the State, in full of all taxation. If this eleventh section does not impose a tax upon the railroad companies' property according to its value, equal to and uniform with other taxation of property throughout the State, it is inconsistent with the requirements of the constitution, and cannot be sustained, notwithstanding the amendment of the charter of the railroad company surrendering supposed exemptions from taxation after ten years.

"The surrender of supposed immunity from taxation, though it might be a good consideration for the grant of special exemptions or privileges, in the absence of any constitutional prohibition to make such grant, cannot give validity to an act of the legislature, which it is prohibited by the constitution from passing. It is argued in support of the validity of this eleventh section that the one and one-half per cent. of the gross earnings of the road is, by the act, ascertained to be equal to the tax assessed on other property; and, if the legislature has adopted this mode of ascertaining value, it is authorized to do so by the express provision of the constitution that the value of property to be taxed shall be ascertained in such a manner as the legislature shall direct.

"If the tax of 1½ per cent. on gross earnings is to be construed as the amount of tax arising upon the value of the company's money at 40 cents on the $100, then if the tax next year should be 60 cents, the company should pay 3 per cent., to preserve equality and uniformity, unless their property should depreciate one-half in value. But the 1½ per cent., under the constitution, insisted on, cannot be increased under legislative contract contained in the section. The first ten sections of the act do aim at equality and uniformity. But the eleventh section proposes to release the companies for 1½ per cent. of their gross earnings, from the operations of the equal and uniform taxation provided in the preceding sections, and substitutes equal taxation, or exemption from all taxation, for the annual payment of a sum to be ascertained—indefinite, uncertain in amount, and dependent upon the amount of their business.

"The eleventh section does not purport to ascertain the value of the property of the companies, nor does it purport to levy a tax upon such property according to its value, but on the contrary it proposes to relieve them from the equal and uniform tax upon their property levied by the preceding sections and to accept 1½ per cent. of their gross earnings in full of all taxation.

"The legislature may direct the manner of ascertaining the value of property, but it cannot tax it otherwise than according to its value. It may choose what agencies it thinks best to ascertain the value of property, but the taxes imposed must be equal and uniform.

"Under section eleven, for a consideration, the legislature has contracted in effect not to tax property or railroad companies at all.

"This cannot be done under the present constitution.

"The judgment of the circuit court will be reversed and judgment rendered in favor of plaintiff."

The Railroads that have Paid.

The following-named railroads have paid into the State treasury for the years 1875 and 1876 the amounts given below, under the eleventh section of the revenue act declared unconstitutional by the supreme court yesterday:

	1875.	1876.
Louisville & Nashville and branches	$25,618 00	$25,085 98
Nashville, Chattanooga & St. Louis and branches	21,840 00	24,848 10
Memphis and Charleston	5,523 75	5,523 70
East Tennessee, Virginia and Georgia	14,743 54	14,454 74
Western and Atlantic	1,188 64	....
Tennessee and Pacific	694 17	....
Tennessee Coal and Railroad company	925 00	....
	$70,536 10	$69,912 52

The total amount of taxes paid into the State treasury under the eleventh section, as will be seen, is $140,448 62. According to the decision of the supreme court, this amount was paid upon a contract based upon an unconstitutional and an invalid enactment, and as the roads cannot sue the State, their only remedy is through a special act of the legislature, either authorizing the return of the money paid into the treasury to the various companies or giving them credit on the tax of 40 cents on the $100 worth of property for the years for which they have paid. Railroad authorities have not yet determined what precise course they will pursue in the matter, but it is pretty certain they will make application for the passage of a special act. It is not altogether certain whether some of the roads may not claim exemption under charters alleged to grant exemption for a certain period of time.

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